

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:07CR444
	)	
Plaintiff,	)	
	)	
vs.	)	TENTATIVE FINDINGS
	)	
OWEN HARRINGTON,	)	
	)	
Defendant.	)	

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 73). The government adopted the PSR. (Filing No. 72.) The Defendant filed a motion for downward departure and variance. (Filing No. 74.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to certain portions of the PSR, as follows: page 2 - his age is 56, not 55 as reported; ¶¶ 23 and 32 - he is entitled to a 4-level downward adjustment for his role in the offense; and ¶¶ 36, 37 - he is not a career offender as reported.

***Page 2 - Age***

Although the objections does not affect the guideline calculation, the Defendant's age should be corrected before the PSR is sent to the Bureau of Prisons. The objection, which apparently was not previously communicated to the probation officer, is granted.

***¶¶ 23, 32 - Role***

The Defendant argues that he is entitled to a 4-level role reduction. This issue will be heard at sentencing only if the Defendant prevails on the career offender issue,

because the issue is moot if the Defendant is a career offender. If the issue is heard, the burden is on the Defendant by a preponderance of the evidence.

**¶¶ 36, 37 - Career Offender**

The Defendant objects to his reported career offender status. The objection will be heard at sentencing. The burden is on the government by a preponderance of the evidence.

**Additional Matters**

The Defendant's motion for a downward departure and variance (Filing No. 74) will be heard at sentencing.

If the parties need more than 30 minutes for the entire sentencing hearing, they should immediately contact Edward Champion and continue the hearing.

**IT IS ORDERED:**

1. The Defendant's Objections to his age as reflected on page 2 of the PSR (Filing No. 73) is granted;
2. The Defendant's objections to ¶¶ 36 and 37 will be heard at sentencing, and if the Defendant prevails on those objections his objections to ¶¶ 23 and 32 will be heard;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final;

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

7. The Defendant's motion for downward departure and variance (Filing No. 74) will be heard at sentencing.

DATED this 8<sup>th</sup> day of September, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge